THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.NOS.24847 AND 24848 OF 2004 AND 6068 OF 2005

COMMON ORDER DATED: 07-09-2005.

Between:

Saraswathi Balanandam (Telugu Medium)

High School, Ganeshnagar, karimnagar

And others ….. Petitioners.

And

The Government of A.P.,

School Education Department and

Others. ….. Respondents.

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.NOS.24847 AND 24848 OF 2004

AND 6068 OF 2005

COMMON ORDER:

1. Since common issue is involved in these writ petitions they are heard together and are being disposed of by this common order.

2. The petitioners-schools are assailing the action of the respondents in not admitting into grant-in-aid w.e.f. 1.11.1994 on par with similarly situated schools. The petitioners-schools were originally established as Upper Primary Schools and subsequently upgraded as High Schools in the year 1983-84. Teaching and non-teaching staff were appointed by the petitioners-schools as per staff pattern and the same were ratified and approved by the competent authority. The Government

issued G.O.No.238, dated 27.5.1986 admitting all schools which were opened after 1.4.1977 with the permission of the competent authority and have completed a minimum period of five years in respect of girls schools and four years in respect of oriental schools. Subsequently in view of certain complaints in the admission of schools into grant-in-aid, the Government constituted a high level committee vide G.O.Rt.No.220, dated 24.2.1988 to look into every case of grant-in-aid as may be pending or as may be referred to it and make a specific recommendation through the Director of Higher education or Deputy Director of School Education as the case may be for release and withdrawal. The petitioners-schools submitted their proposal to the District Educational Officer concerned and the said proposals were forwarded to the Commissioner and Director of School Education, Hyderabad i.e 2nd respondent along with the prescribed proforma for consideration of admission of the posts both teaching and non teaching into grant-in-aid in the year 1994 on par with other schools for consideration. 1st respondent constituted a high level committee under the Chairmanship of 2nd respondent and Director of Higher Education and Additional Secretary, Finance Department as members. The committee scrutinized the petitioners-schools proposals for admission into grant-in-aid and recommended to the Government for consideration and passing necessary orders. 1st respondent while granting the admission in grant-in-aid issued various Gos like G.O.Ms.No.261 Education, dated 10.7.1995. 1st respondent directed 2nd respondent to intimate all the concerned managements of the private educational institutions including the petitioners not to entertain such proposals and recommendations due to stringent financial position of the State. Subsequent to the said Government Order, a Record Assistant P.Kasi Reddy in Sri Vivekananda Gurukul vidyalaya High School, Mahanandi, Kurnool District which aggrieved by the above said Government Order approached this Court by filing W.P.No.20241 of 1999. The said writ petition came to be disposed of on 23.12.1998. The Commissioner and Director of School Education issued proceedings admitting the post to Record Assistant into grant in aid. The Government also issued G.O.No.123, Education (PS-2) Department, dated 9.10.2003 admitting certain posts (Junior Assistant-7, Record Assistants 2 and Attenders 1) in Lal Bahadur High School, Anantapur into grant-in-aid. Under G.O.Ms.No.261 Education (Education-PS2-Department) dated 10.7.1995 certain posts in St.Paul's High School have been admitted into grant in aid. 4th respondent issued government Memo No.1024/PSI/2004, dated 7.10.2004 imposing complete

ban for admitting the schools in grant-in-aid. The action of respondents in not admitting the petitioners-schools to grant in aid is discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India and contrary to Act.22 of 1988.

3. Respondents filed counter affidavit. It is stated in the counter affidavit of 3rd respondent that Finance Department being advisory department is not directly connected with the case. The petitioners-schools are under the administrative control of Education Department. The Education Department being the administrative department has to take action in the matter based on the rules and regulations.

4. Dr.P.Krishnaiah has sworn to the counter affidavit filed on behalf of respondents 1 and 2 in W.P.No.6068 of 2005. The counter affidavit in brief is :

The government in Memo No.12080/COSE/2004, dated 20-10-2004 communicated the decision taken by the High Level Committee in the meeting held on 8.10.2004 that “No new posts to grant in aid would be created and the existing vacancies will also not be filled up, except what has been specifically authorized since there is a General ban on recruitment except for the posts for which permission was specifically granted by the Government”. The State Government is endeavoring to fulfill this obligation to provide free and compulsory education for children of age 6 to 14 years by giving top priority to education and more so to elementary education to all children irrespective of their sex, caste and economic status through formal and other flexible systems. The Government has taken up various measures for providing qualitative and competitive education at the secondary level such as construction of school buildings, supply of furniture, provision for good laboratory facilities etc. There are 75,498 educational institutions i.e. primary/upper primary high schools functioning under the State Government Zilla Parishad and Municipalities. There are 2,56,918 teachers working under the administrative control of the government. The Government has been utilizing the services of 62,685 vidya volunteers for improvement of educational standards in the state by incurring huge expenditure from State funds only. Through DSC 2003 it is proposed to fill 16,449 teacher posts in the State. As per the norms laid down by the Government, there

should be a teacher pupil ratio and the department has taken up rationalization duly following the teacher pupil ratio in respect of government schools, including Aided schools vide G.O.Ms.No.103, Education (Ser-V) Department, dated 5.8.2005. The present teacher pupil ratio is 1:32. The DSE has sent proposal for conversion of School Assistant posts and upgradation of S.G.T. posts after rationalization in respect of Hyderabad District. After rationalization, 55 posts of School Assistants are found to be surplus. Similarly, 1,203 SGT surplus posts are identified and after conversion of 180 posts still 1023 posts are found to be surplus. Proposals have been received from several private aided institutions surrendering the aided posts due to uneconomic strength. After completing the exercise of rationalization, it is expected that a large number of posts of teachers will be declared as surplus. The surplus teachers have to be adjusted in the aided schools where posts are required to be filled up. As per statistics 2004-05 the teacher pupil ratio in private instituins including unaided institutions is as follows:

Category	Number of Teachers	No. of students	Ratio
Primary schools	47451	1682968	1:35.45
Upper Primary Schools	45481	1099485	1:24.17
High Schools	63149	1609899	1:24.49
OVER ALL RATIO			1:28:14

The teacher pupil ratio is highly uneconomical in private schools. Hence, there is no need to fill up the aided posts any further and make the ratio even more un-economical. The government has issued orders for rationalization of posts in private aided school, along with the Government schools, which will result in a large number of posts being declared surplus. The budget allocation for the last five years for payment of salaries to the staff working in different managements under Non-Plan is as follows:

S.No.	Management	99-2000	00-01	01-02	02-03	03-04	04-05
1	Government	162.01	188.35	204.12	232.82	264.74	267.35
2.	Local Bodies	1550.79	1717.72	1095.35	2011.98	2103.62	2357.59
3.	Aided	228.40	276.66	301.89	312.74	313.3	299.23
	Total	1941.20	2182.73	2601.36	2557.54	2681.71	2924.17

The rationalization would result in Government funds being deployed to improve the infrastructural facilities of government and Zilla Parishad School, which mostly cater to the needs of students coming from under privileged sections of the Society. If any school desires to fill up the vacant aided posts it should approach the competent authority, who would adjust the existing surplus teachers in the said school, once the rationalization process is over. The High Level Committee which met on 8.10.2004 decided to examine the requests for Grant in Aid, with reference to the following:

a. The earlier Committee has looked into the pupil on roll instead of average daily attendance of the pupil in the class/section for deciding the eligibility of the post for G.I.A.

b. The reasons and norms for bifurcation of sections have not been looked into.

c. The evidence regarding the creation and sanction of unaided posts is not looked into.

d. Evidence regarding permission to fill up the unaided posts not looked into.

e. Evidence regarding approval of appointment.

f. In some cases retrospective bifurcation of classes shown.

g. Rationalisation of posts in other aided institutions has not been done to examine the feasibility of shifting the surplus posts to meet the present demand to admit the posts into G.I.A."

The cases of the petitioners' schools were examined with reference to criteria laid down and cogent reasons were given in each and every case while rejecting the request for admitting the posts into Grant in Aid. As cogent reasons were given for rejecting the cases of the petitioners, the impugned G.O.2 is perfectly in accordance with law.

5. Heard learned senior counsel appearing for the petitioners-schools, learned Government Pleader for School Education appearing for respondents 1 and 2 and learned Government Pleader for Finance and Planning appearing for 3rd respondent.

6. Learned senior counsel appearing for the petitioners-schools submits that the high level committee appointed by the government as per provisions of A.P.Educational Institutions Act, 1988 (Act.22 of 1988) considered the cases of the petitioners and recommended for admission to grant in aid and therefore appointing the second high level committee to review the matter regarding admissions of schools into grant in aid is contrary to the provisions of A.P.Education Act, 1982 and A.P.Private Educational Institutions Grant in Aid (Regulation) Act, 1988. He further submits that as per the provisions of Act.22/88 the petitioners-schools having been established after 1st April, 1977 and existing on 1st September, 1985 are entitled for admission into grant in aid. To buttress his submissions, reliance has been placed on the decisions of Supreme Court in STATE OF HIMACHAL PRADESH Vs. H P STATE RECOGNISED AND AIDED SCHOOLS, CHANDIGARH ADMINISTRATION AND OTHERS V. RAJNI VALI and DAGGUBATI CHENCHURAMAIAH MEMORIAL DEGREE COLLEGE V. GOVT. OF A.P. In the first cited decision the Supreme Court held that right to education being a fundamental right, the State is under a constitutional obligation to provide free education to children till they complete the age of 14 years. The obligation does not end thereafter, but it is subject to the limits of its economic capacity and development. Judicial notice may be taken of the fact that, ordinarily, a child in this country joins school at the age of five years. All the children studying in the middle schools would be less than fourteen. Therefore, the State Government is under an obligation to provide free education to the children studying in aided non-government middle schools. In other words, the aided private middle schools are entitled to full grants in aid from the State Government. So far as the High Schools and senior secondary schools are concerned, the State Government is again under an obligation to provide free education to the children studying in these schools who are fourteen years of age or less. The net result is that even in High Schools and senior secondary schools up to 8th and 9th class the students being 14 or below, the State Government is bound to provide free education and as such bound to meet the total expenditure of the schools to that extent. The large majority of students, in the non government schools, being fourteen years of age or below the contention of the State based on financial constraints, is wholly untenable. The principal question that arose in the cited decision was whether the teachers employed in various recognized aided private schools in the State of Himachal Pradesh are entitled to the pay scales which are being paid to their counterparts in the government

schools? If so, whether such schools are entitled to receive grants-in-aid to meet 95 per cent of the net approved expenditure? Paras 16 to 18 of the cited decision need to be noted and they are :

> 16. THE constitutional mandate to the State, as upheld by this court in Unni Krishnan case - to provide free education to the children up to the age of fourteen - cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity.
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> **(17)** IT is high time that the State must accept its responsibility to extend free education to the children up to the age of fourteen. Right to education is equally guaranteed to the children who are above the age of fourteen, but they cannot enforce the same unless the economic capacity and development of the State permits the enforcement of the same. The State must endeavour to review and increase the budget allocation under the head 'Education'. The Union of India must also consider to increase the percentage of allocation of funds for "Education" out of the Gross National Product.
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> **(18)** WE, therefore, agree with the High court that the imposition of the maximum limit for the disbursement of grants-in-aid to the respondents was arbitrary and unjustified in the facts of the present case. As mentioned above, the respondent-schools are recognized, aided and are under deep and pervasive control of the State government. The government is under an obligation to provide the grants-in-aid to the respondent-schools as envisaged under the scheme of the Rules. The High court has directed the State of Himachal Pradesh to pay 95 per cent grants-in-aid with effect from February 1988. The High court judgment was delivered on 9/9/1992. We modify the High court judgment to the extent that the enhanced grants-in- aid be paid to the aided schools with effect from 1/4/1993."

In the second cited decision the Supreme Court held that imparting primary education and secondary education to students is the bounden duty of the State Administration. It is a Constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/ regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standard of teaching in any educational institution. Keeping in mind these and other relevant factors, the

Court in a number of cases has intervened for setting right any discriminatory treatment meted out to teaching and non-teaching staff of a particular institution or a class of institutions. In the third cited decision, our High Court held that the State is bound to admit the institutions, which are otherwise eligible for grant in aid without regard to financial ability of the State. Para 11 of the cited decision needs to be noted and it is thus:

> " 11. After hearing both the counsel, I am inclined to say, in view of the Supreme Court decision in State of Maharashtra vs. Manubhai Pragaji Vashi that the State is bound to admit the institutions which are otherwise eligible for grant-in-aid without regard to financial ability of the State. The emphasis of the Supreme Court on this aspect is very much clear from a reading of paragraphs 9, 10, 13 and 17 of the decision referred to above. When the institution is eligible for being admitted into grant-in-aid, the respondents ought not to have rejected the case of the petitioner for admitting into grant-in-aid. Keeping in view the decision of the Supreme Court, I hold that the petitioner-College is entitled for admission into grant-in-aid subject to fulfillment of other requirements contemplated in this regard without regard to the provisions contemplated under Sec.3(1)(b) of the Act 22 of 1988."

7. The learned Government Pleader for School Education appearing on behalf of respondents 1 and 2 submits that the Government considered the high level committee recommendations with regard to admission of 222 posts in grant-in-aid and thought it better to screen the proposals made by the Commissioner and Director of School Education by another high level committee and therefore issued Memo. Dated 7.10.2004. It is contended by him that the action of the Government in taking decision to appoint the second high level committee to screen the proposals sent by the Commissioner and Director of School Education for admitting 222 posts for grant-in-aid cannot be found fault and it being an administrative decision beyond the scope of judicial review. In support of his submissions, reliance has been placed on the decisions of Supreme Court in P.U.JOSHI V. ACCOUNTANT GENERAL, AHMEDABAD, ASIF HAMEED V. STATE OF J.& K and NARENDRA PRASADJI V. STATE OF GUJARAT. In 5th cited decision, the Supreme Court in para 10 held as under:

> " **(10)** WE have carefully considered the sub-missions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other

conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/ posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

The Supreme Court in 6th cited decision at para 17 and 19 held as under:

"**(17)** BEFORE adverting to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy . Judicial review is a powerful weapon to

restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self imposed discipline of judicial restraint.

(19) WHEN a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike-down the action. While doing so the court must remain within its self-imposed limits. The court sists in judgment on the action of a co-ordinate branch of the Government. While exercising power of judicial review of administrative action. the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

In the 7th cited decision, the Supreme Court held as under:

"**(30)** RIGHT guaranteed under Article 26(c) not being absolute and unqualified is consistent with reasonable regulations made by the State provided the substance of the freedom is not affected. The Act does not make any inroad in such a way as to affect directly the substance of that freedom. A particular fundamental right cannot exist in isolation in a water tight compartment. One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests."

8. Chapter VIII (Sections 42 to 47) of The Andhra Pradesh Education Act (A. P. Act I of 1982) deals with 'grant-in-aid'. Section 42 states that the Government shall, within the limits of its economic capacity, set apart a sum of money annually for being given as grant-in-aid to local authority and private institutions recognised for the aforesaid purpose. Section 43 deals with the authorities which may sanction the grant, (section 44 has been omitted in 1983), section 45 deals with the manner of submitting applications for sanction of grant and the conditions to be fulfilled on such sanction. Sub-clause (1) of section 46 gives power to Government to withhold, reduce or withdraw grant, notwithstanding anything in the Chapter, on inquiry, (i) on

the ground of non-availability of funds or (ii) because of the conduct and efficiency and the financial condition of such institution. The section provides opportunity to be given. Sub-clause (2) of section 46 states that, without prejudice to the generality of the provisions of sub-section (1) or any other provisions of the Act, the Government may, after making necessary inquiry, withhold, reduce or withdraw any grant if the management of the Institution is guilty of various acts specified in the sub-clause. Section 47 deals with the manner of utilisation of funds and movable property of private institution.

9. The Government issued G. O. 238 (Ed.) dated 27-5-86 stating that all schools which were validly opened on or after 1-4-1977 and which had completed 5 years in respect of boys' schools and 3 years in respect of girls' schools etc. are to be admitted to grant-in-aid. ON 24-2-88, Government issued G. O. 220 stating that Government had received various complaints against several schools which were receiving grant-in-aid even though they did not satisfy the necessary conditions. It was further stated that the Government had, therfore, constituted a High Level Committee in G. O. Rt. No. 220 (Ed.) dated 24-2-88 to look into every case of grant-in-aid and make specific recommendations. Soon after 24-2-88, the Government felt that a GO was not sufficient to enable the making of inquiries into complaints and that legislation was necessary. It, therefore, came forward with the Andhra Pradesh Private Educational Institutions Grant-in-Aid (Regulation) Act, 1988 (AP Act 22 of 1988) which was published in the Gazette on 29-8-88 and this Act was given effect from 22-7-1985. Section 3 of the Act reads as follows :

> "SECTION 3(1) : Regulation of grant-in-aid to private educational institutions :
>
> NOTWITHSTANDING anything contained in G. O. Ms. No. 238, Education (SSE) Department, dated the 27/05/1986 and GO. Ms. No. 424, Education (CE) Department, dated the 19/09/1985,-
>
> (A) no private educational institution other than a college established after the 1/04/1977 and existing on the 1/09/1985 and no private college established after the 1/04/1977 and existing on the 1/03/1985 shall be entitled to receive any grant-in-aid unless the Committee constituted in GO. Rt. No. 220, Education (SSE-I) Department, dated the 24/02/1988 recommends that it may be admitted to grant-in-aid; and
>
> (B) no private educational institution other than a College which has been established after the 1/09/1985 and no private college which has been established after the 1/03/1985 shall be entitled to receive any grant-in-aid.
>
> (2) A private educational institution referred to in clause (a) of sub-section (1) in favour of which the Committee recommends the

> release of grant-in-aid shall be entitled to such grant only from the date it satisfies all the conditions for admission to grant-in-aid specified in the Andhra Pradesh Education Act, 1982 and the Rules made thereunder, the grants-in-aid Code and the orders and other instructions issued by the Government from time to time in this behalf."

Section 4 of the Act refers to release of grant-in-aid in respect of certain additional sections and posts. Section 5 refers to seeking refund of grant-in-aid if the Committee in G. O. 220(ed.) dated 24-2-88 determines that the institution wrongly received aid. Section 6 said the Act will have effect notwithstanding anything in any law, judgment etc. Section 7 deals with validation. Section 8 repeals the Ordinance of 1988.

10. A plain reading of the provisions of Act.22 of 1988 indicates that the State is bound to admit institutions into grant-in-aid subject to its recommendation by a committee constituted in G.O.Rt.No.220, dated 27.1.1989. It goes without saying that the Government is empowered to constitute a committee to examine the entitlement of the institutions, which come within the ambit of Sec.3 of the Act 22 of 1988.

11. In W.P.Nos.24847 and 24848 of 2004 the petitioners questioned the Memo.No.1024/P-1/2004-1, dated 7.10.2004. In W.P.No.6068 of 2005 the petitioner questioned the Memo.No. 12080/A2/2004, dated 20-10-2004 and G.O.Ms.No.2, dated 11.1.2005. The Commissioner and Director of School Education sent proposals for admission of 222 posts to grant-in-aid basing on the recommendation of the high level committee. The Government constituted another committee since the norms which formed the basis for recommendation by earlier committee are found to be not correct. The petitioners assail the action of the Government in appointing second high level committee.

12. It is contended by learned counsel appearing for the petitioners that the very appointment of second high level committee is not legal and proper and therefore whatever recommendations made by the second high level committee cannot be taken into consideration. The petitioners have not brought to the notice of the court any provision in A.P. Education Act, 1982 or Act.22 of 1988 which disables the Government to constitute a second high level committee to re-examine the claims of various institutions for admission of certain posts into grant-in-aid. There is a

presumption on validity of State action and the burden is on the person who alleges violation of the provisions of the Constitution of India or any statutory enactment.

13. The scope of judicial review is limited as indicated in DWARKADAS MARFATIA AND SONS V. BOARD OF TRUSTEES OF THE PORT OF BOMBAY case to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary.

14. A reading of Memo dated 7.10.2004 gives no room for doubt that second high level committee came to be constituted to re-examine the claims of each of the school/institution for admission of posts in grant-in-aid. There seem to be no bar for the Government to appoint second high level committee to consider the claims of the schools for admission of posts to grant-in-aid. As the society changes from time to time and consequently circumstances follow, it is essential to review the situation from time to time to keep pace with the changed circumstances. Therefore, appointing second high level committee to review the recommendations made by earlier high level committee cannot be found fault. The second high level committee considered the claims of each of the petitioners and stated reasons for rejection.

15. An argument has been advanced by learned counsel appearing for the

petitioners that the second high level committee has committed error in taking average daily attendance of the people in classes/sections instead of people on the role. I do not see any substance in his contention since it is a policy matter which the Government adopted keeping in view the complaint received from various quarters with regard to misutilisation of the earlier ratio i.e. attendance of people in the classes. The government after pros and cons of the existing guidelines for admission of institutions/posts to the grant-in-aid reviewed the guidelines and appointed another high level committee to consider the institutions/posts to grant-in-aid. Para 3 of the G.O.Ms.No.2, dated 11.1.2005 indicates the purpose for which the second high level committee came to be appointed. It is useful to refer the relevant para and it is thus:

" 3. HLC met on 20-12-2003 and 16-2-2004. It subsequently met on 6.10-2004 and decided to review the following aspects as per Grant-in-Aid code and rules issued from time to time.

a. The earlier committee has looked into the pupil on roll instead of average daily attendance of the pupil in the class/section for deciding the eligibility of the post for GIA.

b. The reasons and norms for bifurcation of sections have not been looked into.

c. The evidence regarding the creation and sanction of unaided posts work load of teachers is not verified.

d. Evidence regarding the permission to fill up the unaided posts is not looked into.

e. Evidence regarding approval of appointments.

f. In some of the cases retrospective bifurcation of classes is shown.

g. Rationalization of posts in the other aided institutions has not been done to examine the feasibility of shifting the surplus posts to meet the present demand to admit the post to GIA."

The purpose for which the second high level committee came to be constituted cannot be doubted and it is beyond the scope of judicial review. What is required to be seen is whether the second high level committee had examined the cases of petitioners keeping in view the guidelines issued to them in considering and examining as to whether the petitioners-schools are eligible to grant-in-aid or not. Let me now look at annexure to G.O.Ms.No.2, dated 11.1.2005 whereunder the reasons for rejection of the claim of petitioners-schools for grant-in-aid are

mentioned and they are as under:

W.P.No.24847 of 2004

S.No.	Name of the School	No. of postsRecommended By the then HLC	Total	Observation of HLC met on 28.12.2003
1.	Holy Angles High School (T.M.), Mukarampura, Karimnagar3035/B4-3/04(WP.No.3340/2003, Dt.6.5.2003)	HM-ONESA-THREETPGR.I-ONEHPGR.I-ONESGTs-TWOPET-ONEJA-ONEATTENDER-ONE	11 (ELEVEN)	Certain information has been called for vide Proc.Rc.No.3035/B4-3/2004,dt. 8.12.2004. Proposals rejected as the strength of students (average attendance) in 2003-04 and 2004-05 is far below 40.

W.P.NO.24848 of 2004

S.No.	Name of the School	No of PostsRecommended by the then HLC	Total	Observation of HLC met on 28.12.2003
1.	Saraswathi Balandam, H.S. Karimnagar3034/B4-3/04(WP.No.3138/2001 dt.8.10.2002)	HM-1,SA-3,SGT-2, TPGr-I-1,HP Gr.I-1,PET-1JA-1	10 (Ten)	Certain information has been called for vide Proc.Rc.No.3034/B4-3/2004, dated 8.12.2004. No response from the management to provide necessary information. Based on the available information the strength is un-economical, and also the Government has put a ban on filing up of the posts hence proposal is rejected

W.P.No.6068 of 2005

S.No.	Name of the School	No of PostsRecommended by the then HLC	Total	Observation of HLC met on 28.12.2003
1.	St.Paul's Aided Ele.School Society Colony, giddaluru84 a/b1-3/02 (WP NO.3410/2002, dt.13.3.2002)	SGT. 5	5	Due to ban on creation of new grant in aid posts the proposal is rejected.
2.	Aided Elementary school, Oddulavagupa-lly, Racherla Mandal, Prakasam District426/b1-2/02 (WP.No. 5156/2002, Dt.1.4.2002)	SGT.2	2	Due to ban on creation of new grant in aid posts the proposal is rejected.
3.	Dougles Memorial Aided Residential School, Giddalur923/b1-3/02(WP.nO.12390/02)	SGT.3	3	Government have put a ban on creation of aided posts and hence rejected
4.	S.B.N.R.M. Aided Primary School, Komarole1181/b1-3/03 (W.P.No.18708 of 2004, dt.12.10.04)	SGT 5	5	Government have put a ban on creation of aided posts and hence rejected
5.	S.B.N.R.M. Aided Elementary School, Sivajinagar, Komarole61/b1-3/04 (W.P.No. 18708/04, dt.12.10.2004)	SGT 3	3	As per Teacher pupil ratio the aided existing posts of SGT's are sufficient. Therefore, it need not be considered for Grant in aid. Government have put a ban on creation of aided posts and hence rejected.
6.	S.V.P. Aided U.P.S, Vykuntapuram, chirala802/b1-2/03 (W.P.No.7361/03)	SGT 6	6	Government have put a ban on creation of aided posts and hence rejected
7.	Sri Srinivasa Aided Primary School, Cumbum	SGT 2	2	Government have put a ban on creation of aided posts and hence rejected

8.	Sree Bhramaramba Aided U.P. School Cumbum856/b1-3/03	SGT 2	2	As per average attendance class 1st and 2nd are having uneconomic strength. The existing teachers are sufficient. Government have put a ban on creation of aided posts and hence rejected.

16. A plain reading of the observations of the high level committee which formed the basis for rejection of the claim of the petitioners/institutions for admission to grant in aid indicates that the committee did not consider the claims in a way in which they are required to be examined. Most of the cases of the petitioners came to be rejected because of ban imposed by the government and for non-furnishing certain information by the petitioners/institutions. What is required to be examined by the committee is whether the petitioner/institutions are entitled to receive grant in aid. With regard to release of the amount, it is a separate issue which cannot be clubbed with the entitlement of the petitioners/ institutions for admission into grant in aid. Under section 3 of the Act 22 of 1988 the private educational institutions established after 1-4-1977 and existing on 1.9.1985 are entitled to receive grant in aid provided the committee concerned constituted under G.O.Rt.No.220, dated 27.1.1989 and the Memo dated 9.2.1981. Under G.O.Rt.No.220, dated 27.1.1989 the Government appointed a committee and entrusted the functions which are required to be performed. The functions of the committee as enunciated in the said G.O.Rt.No.220, dated 27.1.1989 are:

1. It will look into every case of grant in aid as may be pending or as referred to right from the inception of the grant in aid scheme and submit report to government.

2. The committee shall be the First Class Committee for the purpose of T.A. & D.A. It will tour throughout the State inspect any account, visit any institution to satisfy itself about the running of the educational institutions in conformity with the Educational Act and the rules issued there under and satisfy itself whether public interest is kept in view and the institution is serving intended purpose of educational institutions, safeguard government money.

3. All complaints received against the functioning of the institutions, misuse of the grant in aid shall be referred to the committee for careful consideration.

4. The pending complaints, as well as future references shall be referred to the committee for their views/disposal.

5. No individual case of grant in aid shall be sanctioned unless the committee satisfied itself about the regularity and propriety in running the institutions duly observing the various rules and regulations attached to the grant in aid and also other General rules and regulations.

The functions of the committee have been detailed in the aforesaid G.O.Rt.No.220, dated 27.1.11989. The second high level committee constituted by the Government must keep in view the guidelines issued by the Government while recommending the case of each of the institutions with regard to their entitlement for admission into grant in aid. The way in which the high level committee considered the cases of the petitioners would indicate the total non-application of mind to the guidelines issued for admission of institution into grant in aid. In these circumstances, I am left with no option except to direct the high level committee to reconsider the cases of the petitioners herein keeping in view the guidelines issued by the Government in G.O.Rt.No.220, dated 27.1.1989 and subsequent there to while recommending the cases of the petitioners/institutions as their entitlement for admission into grant in aid.

17. In the result, all these writ petitions are disposed of directing the high level committee to reconsider the cases of the petitioners herein for their entitlement for admission into grant in aid and pass appropriate orders as expeditiously as possible preferably within six months from the date of receipt of a copy of this order. No costs.

Dated: 07-10-2005. (B.Seshasayana Reddy,J)

tnb

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

COMMON ORDER DATED: 07-09-2005.